UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 20-33948 Chapter 11 (Jointly administered)_
FIELDWOOD ENERGY, LLC, et al.,	.	515 Rusk Street Houston, TX 77002
Debtors.	.	Monday, July 19, 2021 1:58 p.m.

TRANSCRIPT OF CONTINUED CONFIRMATION HEARING
BEFORE THE HONORABLE MARVIN ISGUR (VIA VIDEOCONFERENCE)
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtors:	Weil, Gotshal & Manges LLP By: ALFREDO R. PEREZ, ESQ. CLIFFORD W. CARLSON, ESQ. 700 Louisiana, Suite 1700 Houston, TX 77002 (713) 546-5040 Weil, Gotshal & Manges LLP By: ERIN MARIE CHOI, ESQ. 200 Crescent Court, Suite 300 Dallas, TX 75201-6950 (214) 746-8184
For LLOG Exploration Offshore, L.L.C.:	Gieger, Laborde & Laperouse L.L.C. By: JOHN E.W. BAAY, II, ESQ. 701 Poydras Street, Suite 4800 New Orleans, LA 70139 (504) 561-0400

APPEARANCES CONTINUED.

Audio Operator:	Melissa Morgan, ECR
Transcription Company:	Access Transcripts, LLC 10110 Youngwood Lane Fishers, IN 46038 (855) 873-2223 www.accesstranscripts.com

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TELEPHONIC APPEARANCES (Continued):

For the Ad Hoc Group of Secured Lenders:	Haynes and Boone, LLP By: DAVID TRAUSCH, ESQ. 1221 McKinney Street, Suite 4000 Houston, TX 77010 (713) 547-2000
	Davis Polk & Wardwell LLP By: MICHAEL PERA, ESQ. NATASHA TSIOURIS, ESQ. 450 Lexington Avenue New York, NY 10017 (212) 450-4000
For the Official Committee of Unsecured Creditors:	Pachulski Stang Ziehl & Jones LLP By: AYALA A. HASSELL, ESQ. 440 Louisiana Street, Suite 900 Houston, TX 77002 (713) 691-9385
For Cantor Fitzgerald Securities:	Shipman & Goodwin LLP By: KATHLEEN M. LAMANNA, ESQ. One Constitution Plaza Hartford, CT 06103-1919 (860) 251-5603

(Proceedings commence at 1:58 p.m.)

THE COURT: All right. Good afternoon. We're here in the Fieldwood Energy case. I've opened up Ms. Choi's line, Mr. Perez's line, and Mr. Baay's line. If anybody else needs their line opened up for today's hearing, please press "five star" on your phone. Otherwise, we're going to proceed and let Mr. Baay start the day. Let's see who we have.

Mr. Carlson, good afternoon to you, as well.

All right. Mr. Baay, go ahead.

MR. BAAY: Good morning, Your Honor. And may it please the Court, John Baay for LLOG Exploration Offshore. We are here this morning on an adjourned motion that was started -- I'm getting a lot of feedback. Hold on.

THE COURT: Yeah, let me see whose line -- that could be from one of the other lines. Hold on. Let me see.

Who's going to be speaking from the debtors' side? Is that going to be -- who's going to take the lead?

MS. CHOI: Your Honor, Erin Choi on behalf of the debtors. Me and Cliff Carlson will be handling the presentation on our end.

THE COURT: I'm going to go ahead and mute Mr. Perez's line, in case that was coming from him. Let's try again, Mr. Baay. That may have been Mr. Perez. I don't know.

MR. BAAY: Okay. Thank you, Your Honor. Again, John Baay on behalf of LLOG Exploration Offshore. We are here today

on the adjourned motion that we began during the confirmation hearing. And just for Your Honor's recollection, we at that point offered and accepted a number of exhibits that were -- began at 1603-1, and we'll be using those throughout the course of this hearing today.

The only additional exhibit that we'd like to offer now, before we get started, is 1603-7, which is the Declaration of Allyson Bolton Peters, and I believe there has been an agreement as to that document coming into evidence.

THE COURT: Ms. Choi, Mr. Carlson, any objection to the admission of 1603-7?

MS. CHOI: No objection, Your Honor.

THE COURT: All right. 1603-7 is admitted.

(ECF 1603-7 admitted into evidence)

MR. BAAY: Next, Your Honor, if you could please assign Stephanie Franks the presenter's rights.

THE COURT: All right. Hold on.

(Pause)

THE COURT: All right. Ms. Franks is now the presenter.

MR. BAAY: Thank you.

Stephanie, can you pull up our PowerPoint, please.

Your Honor, we're here today on a relatively narrow focus to determine the validity and effect of a security interest that LLOG believes it has in an overriding royalty

interest in Green Canyon 201, the Northeast Quarter from the surface to 17,000 feet.

We have, as previously mentioned, entered and introduced a number of documents into the record, and we'll go through those in just a minute. But the main points that got us from Point A to Point B are the following: And the first is that LLOG and Fieldwood are parties to an offshore operating agreement that dates back to December 12th, 2002. They weren't the original parties, but we'll walk through how that happened, and that fact is not in dispute.

The second fact is the contract area under the operating agreement includes two blocks, Green Canyon 157, Green Canyon 201, the Northeast Quarter from the surface to 17,000 feet. And again, this fact is not in dispute. It's not established by one document, but by a series of transactions that happened. But again, there's no dispute in that.

The next slide.

The next point, and what we're here about today, is that there's a mortgage that secures the obligations under these operating agreements. And as we'll discuss, this is a very common practice offshore, especially with companies such as Fieldwood and LLOG, where one company is an operator and one is a non-operator.

Fieldwood, as the non-operator, has obligations to pay its share of operating costs that are incurred, and those

costs include the abandonment costs under this operating agreement.

Fieldwood granted LLOG a mortgage to secure Fieldwood's obligations under the operating agreement. And again, just like the other points that we've made, this didn't happen in one document. It happened in a series of transactions. But we'll walk through those. And the end result is that Fieldwood granted LLOG a mortgage to secure its obligations.

What did that mortgage cover? Well, it covered all of Fieldwood's interests to and among other things "all other immovable properties susceptible of mortgage situated with the contract area." So, this is taken straight from the operating agreement. They give -- the mortgage covers several things that they own. And then, under the After-Acquired Title Doctrine, says, "any other immovable properties now owned or acquired in the future that are susceptible of mortgage" -- so those are going to be immovable property, whether it's real or -- what (indiscernible) say in Louisiana? Corporeal or incorporeal, that are situated within the contract area. And we'll see, as we walk through this, that the overriding royalty interest is clearly immovable property, susceptible of mortgage, that's situated within the contract area.

THE COURT: So, Mr. Baay --

MR. BAAY: Go to the next slide.

THE COURT: One of the things that Fieldwood has said is that in the assignment of the ORRI that it excludes consideration of any other agreement that might affect the ORRI. And they quote me a section out of that in Paragraph 22 of their memo.

How, under Louisiana law, do I deal with -- that the mortgage covers everything and then I have the assignment of the ORRI that says that it doesn't?

MR. BAAY: Let me look and see which paragraph they're talking about --

THE COURT: Their Paragraph 22 of their brief. I haven't looked at the underlying document yet.

MR. BAAY: Okay. So here's the basic -- this -- their whole argument that you're referring to is based on one premise, and that is that the override, as it's created, is not subject -- it's proof that they own it free and clear. And when Shell took the override, it was not subject to any mortgage, right?

And that was, in fact, true. Shell had not given a mortgage over this override to LLOG or anybody else. Shell owned it free and clear. And not only that, the override was by its very nature not subject to the cost and expenses -- like they said, exploring, developing, and producing in the contract area.

That's what makes this override valuable. It's

because it's not subject to those costs. And it wasn't subject to any lien or mortgage when it was given to Shell.

So when it falls underneath the mortgage, it's because Fieldwood gives a mortgage to LLOG. And then it says, if I acquire anything else, then that -- whatever I acquire of value -- so the override has got value -- then that's going to fall underneath your mortgage.

And they talked about it as being an unintended consequence. Whether it's intended or not doesn't matter. That's the consequence. And they did it in that order. They granted the mortgage, and then --

THE COURT: No, no. Here's --

MR. BAAY: -- they bought this override.

THE COURT: This says -- and I don't know if y'all are even bound by this provision. So, I mean, maybe that's where we ought to start, is whether you're bound by the provision in the Shell Marathon ORRI assignment or not. I thought LLOG was bound by this.

But it says there are "no further understandings, representations, warranties, or obligations pertaining to the ORRIs, and this conveyance supersedes and replaces any and all prior agreements, written or oral, between the parties."

Was LLOG a party to this document? And if so, why wouldn't this override and replace a mortgage that would affect the ORRI?

MR. BAAY: Because, Your Honor, there are two totally separate things. One of -- what you're talking about is if this override, when it's created, and when there is an assignment of the override from LLOG and Davis back to Shell and Marathon, they're saying you have this override and it's not subject to any mortgage or lien or anything like that. And that's what gives that override value.

And you're absolutely correct. What it does, it falls underneath the mortgage that Fieldwood has given, because Fieldwood says I'm going to give you a mortgage on everything I own in 201, and if I acquire anything else --

THE COURT: I got that Fieldwood said that. I'm trying to deal with the conflict between the two agreements. One says I'm giving you a mortgage on whatever I acquire in the future, and the other one says anything I agreed to do previously doesn't count.

MR. BAAY: Yeah, but -- you know, you're right. But Fieldwood is not a party to that, the document you're talking about, where the original assignment was made from LLOG and Davis to Shell and Marathon. That's where the original creation of the --

THE COURT: Well, yeah, but you've made it really clear that Fieldwood is bound by whatever Davis obligations were and whatever Davis's benefits were. So Davis was a party, right?

MR. BAAY: Sure. Davis is a party, and they owe -- right. So the override is created. Davis is a party. And Shell and Marathon and LLOG are -- those are the four parties to that original assignment that creates that override. That's correct.

And so -- and you go on down the road, and the next thing that happens in the timeline is that Fieldwood changes places with Davis. Right?

THE COURT: Right.

MR. BAAY: So, if you walk through the timeline, the next thing that happens is Fieldwood changes places with Davis. At that point, Shell still owns the override, right? Shell and Marathon are still receiving payments from the override. And it's not encumbered by anything, right? Fieldwood hasn't -- it's not encumbered by Fieldwood's mortgage.

So the override is out there. Shell owns it. And it's not encumbered. Okay?

THE COURT: Okay.

MR. BAAY: So that's the state of the world at the end of 2014. Fieldwood is now in Davis's shoes and --

THE COURT: And the ORRI --

MR. BAAY: -- and the override --

THE COURT: And the ORRI assignment replaced and superseded all prior agreements, written or oral. But you're telling me --

MR. BAAY: That's right.

THE COURT: -- you're telling me it didn't, really.

MR. BAAY: No, it did. It did.

THE COURT: Okay.

MR. BAAY: It did. So there's not any other -- nobody's presented any other documents, any other that says that the override is subject to anything else, any costs or -- development costs. The override is valued as it's valued. It's defined as it's defined in that assignment. And that never changes. That's what gives that override value. Right?

So the override has value, because it's not subject to any other costs. It's owned free and clear by Shell. And it is paid by LLOG and now Fieldwood as they develop 201. So that's the current state. LLOG and Fieldwood -- LLOG as operator, Fieldwood as non-operator, are operating 201. They go through 2014, and the override is being paid. It's not subject -- exactly like you said. It was created -- it's not subject to any other encumbrances. And so that's what it is, right there. So you're exactly right. That's the override.

Then what happened is there's another transaction that happens. And the next transaction that happens is in 2015, Fieldwood acquires from Shell several different interests. And let's look at what they got. We're skipping around a little bit here.

Effective January 1st, 2015, Fieldwood acquires from

Shell a set of properties. Let's see.

And, Stephanie, could you go to 1603-21. And next page -- okay.

Okay. So now everything is the way we just described it. Now Shell enters into a transaction with Fieldwood. And as part of that transaction, effective January 1st, 2015 -- so this is, you know, literally a couple months after Fieldwood has done the transaction with Davis, has mortgaged what it owns in Green Canyon 201. It enters into a transaction now with Shell.

And go to the next page. I'm sorry. Go to Page 5, please.

So it was signed in July by Fieldwood and Shell, effective January 1st, 2015.

And go to Page 6.

Okay. So this is what it describes -- so this is what Fieldwood acquired. In a separate transaction with Shell, it acquired an overriding royalty interest in Lease 11043. That's the first block. And in the second block, we find our override. That's the override that was originally created that you talked about earlier. It wasn't susceptible to any other agreements. It was unencumbered. So this is the override.

And it has value, obviously, because it's part of this transaction. Fieldwood is paying for it. There's an exchange for consideration. And they're getting these

overrides. They also get an override in their Vermillion block. But the one we're concerned about is the Northeast Quarter of Green Canyon 201.

And so Fieldwood acquires that interest as part of this transaction. And at that point, this interest becomes subject to the mortgage that Fieldwood has given to LLOG as part of the operating agreement that dates all the way back to 2002. And the reason it does that is because Fieldwood says, look, I've got these obligations under this operating agreement. And if I -- I'll give you my -- a mortgage on what I own. And if I acquire anything else, any other interests susceptible of mortgage, in Block 201, then my mortgage is going to cover that, as well.

And as soon as this was purchased by Fieldwood, it falls underneath their mortgage. It's still -- I mean, it's still -- the override as it's defined is, of course, still free and clear of any costs. So it is paid. You know, it doesn't change how it's paid. It doesn't change how it's valued. It's still a valuable asset that Fieldwood owns. And it's paid to them. Nothing changes with respect to the override. It just becomes part of the security package that Fieldwood has given and granted to LLOG as part of being a non-operator under the offshore operating agreement.

THE COURT: No, and I understand that argument as to Subparagraph 1 of the ORRI assignment. But they're referring

me to Subparagraph 7 of the ORRI assignment, and that's where I'm having difficulty understanding -- if the mortgage predated the assignment, and the assignment to which your client was a party says that mortgage will never affect this ORRI. And now you're telling me, well, it will never affect the ORRI unless Fieldwood is the one that acquires it. But I don't think that's what Subparagraph 7 says.

MR. BAAY: Okay. Tell me -- I'm sorry. Which -- Paragraph 7 of which document? Just so that I can have it pulled up.

THE COURT: Well, again, if you'll go to their Paragraph 21 and 22 of their brief, I asked you to look at 22, and you're quoting to me out of Paragraph 21. I understand the Paragraph 21 argument. That's out of Subparagraph 1 of the assignment. That's quoted in Paragraph 21. But in Paragraph -- and that says that the ORRI itself won't be subject to these charges, sort of in the internal calculation of it.

Paragraph 22 says the ORRI isn't subject to any prior agreement. And you're telling me, well, it is subject to the prior mortgage if Fieldwood is the one that acquires it. That's why I'm having trouble reconciling what you're telling me.

MR. BAAY: Okay. It's not -- I guess the thing that is a little bit tricky to understand. It's not -- it's not the overriding royalty interest that's subject to any liens that

happened earlier. It's -- that's the reason why it has value, right? So it's -- so you're exactly right --

THE COURT: 21 is the --

MR. BAAY: It has no --

THE COURT: No. 21 is the reason that it has value. 22 is the one that says it's free of any prior agreement.

21 says you can't charge me for any operating costs pertaining to the property. You can't charge me for P&A. You can't charge me for anything.

You're saying fair enough, we agree with that. But our mortgage takes the ORRI itself.

And they're arguing that Paragraph 22 took away your right to get the ORRI itself because it says if there's something that's a mortgage, it doesn't count as to the ORRI.

And you, I believe, are saying unless it's Fieldwood that it acquires it, and then it would count. And I don't see the "unless it's Fieldwood that acquires it, it would count" language.

MR. BAAY: I'm sorry. I misunderstood. No. What they're saying is that, look, we are representing to you that this overriding royalty interest is not subject and we will -- and we are pledging, and representing, warranting, that this override is not subject to any other or previous prior agreements so that you -- so what it's telling Shell is, Shell, you, as the owner, right? That's who it's pledging. It's

saying, Shell, you, as the owner of this override, can be confident that there's no mortgage that applies to this override that you own.

THE COURT: Unless you sell --

MR. BAAY: Right?

THE COURT: -- it to somebody that has a preexisting mortgage. And it doesn't say that.

MR. BAAY: No. Even if you sell it to somebody who has a preexisting mortgage, the only reason it falls underneath that preexisting mortgage is because it's after-acquired property. So it doesn't -- so Fieldwood doesn't buy it and then all of a sudden say, oh, well, you know, you promised Shell that there was no mortgage on this, so it can't fall under my mortgage. That's their argument.

Well, that's not what that means. What they're saying is they're representing to Shell that there's no mortgage. There's no prior document. There's nothing out there that --

THE COURT: This says it supersedes --

MR. BAAY: -- somebody (audio interference) --

THE COURT: -- it supersedes and replaces all prior agreements.

MR. BAAY: Right.

THE COURT: Why is the mortgage not a prior agreement?

MR. BAAY: That's as to Shell. That's not as to Fieldwood.

THE COURT: It doesn't say that.

MR. BAAY: That's as to Shell.

THE COURT: Look. I assume, and I haven't looked at it, that you made these representations to Shell, their successors and assigns. And so Fieldwood becomes their successor and assign. Whether you say it specifically or not, sort of by operation of law. When you give somebody -- fee simple title to somebody, it applies to them, and all their successors and assigns.

Maybe Louisiana law is different, and you should explain that to me if it is. But I'm trying to understand why Shell's successor can't rely -- you're telling me -- you'll remember this conversation started with, look, they're saying it's an unintended consequence.

Well, it may be that the unintended consequence is in Paragraph 7. And you don't get to step in and say, well, we're going to take advantage of Unintended Consequence 1, which is Fieldwood is the acquirer, but we can ignore the language of the fact that it was supposed to be free and clear of all prior agreements as to both Shell and its successors.

And I don't -- that's the argument I'm having trouble following. I think I need to follow these pretty literally and not worry about unintended consequences one way or the other.

MR. BAAY: No, I agree. I absolutely agree. So what this is representing is -- and you're exactly right. What this is representing to Shell -- and I need to look through the rest of this and see whether it's representing to their successors and assigns, but let's assume that it is. All this is doing is saying to Shell that you own this -- that we haven't -- by any prior agreement, we haven't mortgaged this, and it's not subject to any mortgage.

And then what happens in the transaction with Fieldwood is --

THE COURT: It says a whole lot more than just mortgage. It's "any and all prior agreements."

MR. BAAY: Right. Okay. Even broader than mortgage. So any other -- it's not encumbered by any other prior agreements. So, Shell, you can own this confidently, that there's not any prior agreements. And you can sell this to a successor like Fieldwood, and you can then in turn represent to Fieldwood that there's no prior agreements that are going to encumber this -- that are out there that are going to encumber this override. Right? That's -- Shell can make that representation to Fieldwood.

But that doesn't prevent Fieldwood from turning around and saying, I have this great, valuable override that I just got from Shell. I know from the representation from the original assignment that it's not encumbered by any prior

agreements or mortgages. But now I'm going to take it and I'm going to take it and I'm going to put it in, and I'm going to put it as part of my mortgaged property to LLOG. That's what happened. So --

THE COURT: Okay. I thought the argument was they had previously given a mortgage to LLOG. Did they give their mortgage to LLOG after they acquired the interest? Because I thought they had given the mortgage previous to this agreement.

MR. BAAY: No. They give the mortgage previous to the agreement. Of course. So this is after-acquired property, right?

THE COURT: Right.

MR. BAAY: So you can go to the bank -- right. So you can go to the bank. This is exactly what happened. You go to the bank and you can give a mortgage on the city block. Okay? And then you can go in and you don't own any of it, and you can start buying one lot, and then you can go buy the next lot, then you go buy the next lot.

And as you buy each lot from the seller of each one of those, you say, hey, you've got to tell me -- you've got to represent to me that there are no other mortgages on this, no prior agreements that are going to come up and --

THE COURT: I guess it depends on --

MR. BAAY: -- encumber this --

THE COURT: -- what does "between the parties" mean

is maybe what we're coming down to. You're telling me "between the parties" means between Shell and the others. Fieldwood is saying -- Fieldwood is a party. They get to rely on this, too.

MR. BAAY: Fieldwood was not a party to this document. This is the document that creates the --

THE COURT: Davis was a party, right?

MR. BAAY: That's right. Davis was a party and so Davis is --

THE COURT: So Fieldwood and Davis are stuck in the same boat. You told me that specifically in your brief, that Fieldwood inherits all of their rights and all of their obligations of Davis, because they acquired the equity. So if Davis was a party, for all intents and purposes, Fieldwood was a party.

MR. BAAY: That's right.

THE COURT: Okay. So Fieldwood was, for all intents and purposes, a party to Paragraph 7, not just Shell.

MR. BAAY: That's right. And so -- that's right. So even -- I hadn't thought it through to that extent, but assume that's the case. Fieldwood can represent to Shell that the override that it is getting is free and clear of any -- and supersedes and replaces any prior agreement. That does not prevent Fieldwood from then including it as part of the property that it mortgages.

THE COURT: I understand that a subsequent mortgage

-- Fieldwood could have come in and modified the paragraph. But you're telling me there was an existing mortgage.

MR. BAAY: Right. But all -- and that's fine, because all that happens is this unencumbered override becomes after-acquired property. That's all it is. It's just like a developer that buys the next lot.

THE COURT: I agree. I understand that. But why does the -- why is it that the after-acquired property clause gets excluded from there are no prior agreements?

MR. BAAY: Because the "no prior agreements" refers to an encumbered of the override. Right? So there's no prior agreement that encumbers this override. There's no document out there that says that the override on the Northeast Quarter of GC 201 is subject to my mortgage or has -- there is no other or any other agreement. But that doesn't prevent Fieldwood from then mortgaging that, once it owns it. That's all that's (audio interference) --

THE COURT: But I just want to be sure we're dealing in tenses here, and be sure I'm understanding the facts. There can't -- I don't believe there can be a dispute that Fieldwood could subsequently execute a new mortgage over the property.

When you started off with "unintended consequences," your "unintended consequence" statement meant it might become after-acquired property under a preexisting mortgage. And that's why I wanted to focus on this, because this seems to say

that anything that existed between those four parties -- Davis/Fieldwood on one hand, LLOG, Shell, and Marathon -- everything is hands-off as to the ORRI. Not internal to the ORRI. That's Paragraph 21. External to the ORRI. And I'm not sure that we're not talking in circles here.

MR. BAAY: No, I mean --

THE COURT: It may make sense to move ahead, but that's -- I'm trying to express the concern really clearly to you that they've raised.

MR. BAAY: No. I understand. I understand the concern. And I think it's taking two different things -- it's taking that "all prior agreements" out of context. The document that they're talking -- I mean, the agreements that they're talking about are anything that would encumber the ORRI as part of its assignment, but that the new --

THE COURT: Maybe we should bring up that agreement so I can look at it in context. What's that exhibit number and I'll take a look?

MR. BAAY: Okay. It's 130 -- pardon me. 1603 -- hang on one second.

THE COURT: Sure.

MR. BAAY: 1303-6.

THE COURT: All right. Let me bring that up.

(Pause)

THE COURT: Okay.

MR. BAAY: So Paragraph (vii) is where you're focused.

THE COURT: Right.

MR. BAAY: (Audio interference) "there are no further understandings, representations, warranties, or obligations pertaining to the ORRI, and this conveyance supersedes and replaces any and all prior agreements, whether written or oral, between the parties."

THE COURT: Right. So Fieldwood has an agreement --

MR. BAAY: And I think --

THE COURT: -- that if it acquires any new property within the area of interest, it will be subject to your mortgage. They're a party to this --

MR. BAAY: That's correct.

THE COURT: They're a party to this agreement. So are you. If they acquire an ORRI within the area, it's going to be subject to the prior mortgage. This supersedes and replaces anything that says it's going to be subject to a prior mortgage. How does your prior mortgage apply?

MR. BAAY: Well, Your Honor, I think we need we need to go back and look -- I'm not -- one of the points that you made, and that we've made, is that Davis and Fieldwood are the same. I think if we're getting down to this level, that only applies in the operating agreement and the documents where they specifically -- I mean, there are specific documents where

Fieldwood comes in and takes an assignment from -- buys the equity of Davis and then, in the next step, takes an assignment of Davis's interest in the operating agreement.

THE COURT: Okay.

MR. BAAY: There's no document that -- where Fieldwood came in and became a party to this assignment. So this assignment -- the only parties to this assignment now or ever are Fieldwood -- I mean, I'm sorry, Davis and LLOG on the one hand, and Shell and Marathon on the other hand.

So, you know, Fieldwood is going to come into this document. There's no document that -- where Fieldwood is a party. I mean, there are no documents -- prior agreement where Fieldwood is a party that would apply here.

THE COURT: Okay.

MR. BAAY: "Whether written or oral between the parties." Fieldwood is not a party to this document. So the override gets created, and then subsequently sold to Fieldwood. And Shell represents to Fieldwood, because it was represented to Shell, that there is no prior agreements -- there are no, whether written or oral.

Shell says look, when I acquired this from LLOG and Davis, I got a representation from them that there were no prior agreements, whether written or oral, that -- regarding this override. And Fieldwood can take it -- and it can take it and be satisfied that it's getting an override as it's assigned

without any other encumbrances.

But that doesn't prevent Fieldwood from then encumbering what it has just purchased. And that's all that happens. Fieldwood comes in. It buys this override, effective January 1st, 2015. And at that point, the After-acquired Title Doctrine applies, and the operating agreement that it is a party to says if you acquire something else in this field, then our mortgage applies to that override. (Audio interference) mortgages, right? Just this Fieldwood mortgage.

And Fieldwood had the opportunity -- at that point, Fieldwood could have said before it took the assignment, or it could have gone along and said, look, I'm getting ready to acquire this. I don't want this to fall within my mortgage. There's no other mortgages on this override. It's a valuable asset for me, and I don't want this to come into the mortgage that I've already granted.

That's what it could have done. But it didn't do that. It took the override. It's clearly part of the definition of the grant. It's incorporeal removal. It's subject to mortgage. And it's clearly called out in the -- it's within the contract area.

So when they purchased it, they now -- it now falls underneath. And when they purchase it as an unencumbered, valuable override, it then becomes at that point subject to their mortgage. It wasn't subject to it before. It becomes

subject to it then.

So the representations and warranties are correct, both on this side and when they acquire it. But they can certainly have the right to go acquire more property, and they've given a mortgage to LLOG that says if I go acquire anything more in this field, in this contract area, then that falls underneath my mortgage. And that's all that's happening here.

So, you know, the override before Fieldwood owns it is unencumbered, and this paragraph doesn't change that. But it certainly doesn't prevent LLOG from having it come under its mortgage that it has already given to LLOG.

THE COURT: Did Fieldwood execute that mortgage with the "after-acquired" provision or did Davis?

MR. BAAY: Davis did it, and then Fieldwood came back and ratified it.

THE COURT: Right. Did they ratify it after -- that this conveyance superseded and replaced all prior agreements?

MR. BAAY: Let me look to make sure of the exact date.

No. Fieldwood signed the ratification on December 2nd, 2014 is when it amended and ratified the memorandum of assignment and financing agreement. That's 1603-20.

THE COURT: So after --

MR. BAAY: Can you put that up --

THE COURT: So after this assignment and conveyance of the ORRI, which superseded that agreement, they ratified the superseded agreement.

MR. BAAY: That's right. I think -- if I'm following you, I think that's right.

THE COURT: I'm not sure what that legal effect is, but it's an interesting sequence. Okay. I think we've sort of beaten this -- you're welcome to spend as much time as you want on it, but I think I understand what the problem is. I don't know what the answer is, but I got it, and it's an interesting problem.

MR. BAAY: Okay. Again, I think -- I think you're exactly right. We've beaten that horse.

THE COURT: Let me go back and get your person back in control of the presentation again. Hold on.

MR. BAAY: Okay. Thanks.

THE COURT: That was Ms. Franks, right?

MR. BAAY: Correct.

THE COURT: Okay. She's back in control.

MR. BAAY: Okay. One of the other arguments that they make is that assuming that we did get a mortgage, and if we cross that hurdle, that it was not properly perfected in the mortgage (audio interference) -- and again, the declaration that we just introduced (audio interference) appears, along with the documents that are attached thereto, walk through each

of those file documents. The only issue that they raise with respect to those is that there's a UCC filing statement that was attached along with the -- some MOA and corrected MOA. And we'll take a look at that real quick.

So, Stephanie, let's look at 1603-8. We'll start there.

So this is the original filing in the Terrebonne records. Let's go to the next page.

And right -- so the next two, three pages are the UCC filing statements that were also filed with the Secretary of State. And then, after those pages, the next page after that, there's a memorandum of operating agreement and financing statement.

So they are considering this a -- just an exhibit to the financing statement. And really, those financing statements, the UCCs are superfluous cover pages. But this document is clearly filed in the mortgage records, and it clearly applies to the operating agreement that was signed on October 12th, 2002, between Davis and LLOG.

If you'll go to Pages 7 and 8 -- do you have 8-78, Section 5.3. There we go.

So here's the original memorandum -- the "MOA," I'll call it. And this is clearly filed in the mortgage records of Terrebonne Parish. It describes the non-operating party and the operating agreement. It describes what is being secured.

The complete and timely performance of any payment by the non-operating party to the operator. Payment of all expenses incurred by the operator.

And then go to 16.39. So this is filed in the mortgage record. And then, again, if you go through the next page, you'll see the UCCs, cover pages, and then the corrected MOA. And the only thing that happened here is it represented -- in the original, it called it Garden Bank instead of Green Canyon, and so that was fixed.

So there's no question that in the mortgage records, the MOA is filed. There are no other filings. There are no other -- there's no other claim being made to this override and in this mortgage. So there is a perfected position, first position, by LLOG in this asset.

The next argument that they make is that somehow this was improperly perfected because it's rent, and that we didn't do exactly what we needed for rent. And all I can say is they didn't provide any cases that suggest that override is not an incorporeal removable subject to mortgage, and that this mortgage is not affected as to that interest, whether it's called rent or otherwise. The mortgage clearly describes the contract area, and the contract area is well defined as Sections 157 and 201. So a valid mortgage is in place on all of those interests; and that includes, obviously, the override.

The last thing that they argued is that the lien does

not secure future P&A. And this is pretty easily handled under the Tri-Union case. Because what they're saying is this is going to be disallowed, so there's no reason to continue with a security interest. And I think the Tri-Union case, Your Honor, made a good point there. It said that what happens is even if it's contingent, because it's contingent and disallowed, that doesn't mean you lose your security interest. It just -- the security interest carries forward, and is effective when that liability becomes known and certain and due and payable.

So, you know, they sort of stop short of saying what happened because it's contingent. Just because it's contingent and may be disallowed does not mean that they lose their security rights in the override. Thank you, Your Honor.

THE COURT: All right. I want to -- you sort of started off your presentation by saying we're here today to figure out if we have a secured claim. Are we also here to figure out if you have a claim?

MR. BAAY: My understanding is that we were not. I mean, there's been a proof of claim that was filed as to two things: One, our outstanding joint interest billings, and there is a dispute over some offsets to those. And my understanding was -- from discussions with the Fieldwood lawyers, if there is a decision that we do have a security interest in the override, that the most likely step will be they will assume and assign the operating agreement, and then

we'll be back for another hearing on a cure. That there are some outstanding joint interest billings, they have a claim for some offsets, and we'll just deal with those at another time. But that was -- my understanding is that those -- that discussion was not up for today.

THE COURT: That's fine with me, if that's what y'all think you're all litigation. I probably need Ms. Choi or Mr. Carlson to confirm that. Because the 502(e) issue does get raised, and your response to it is -- and I'm paraphrasing a bit here -- it doesn't really matter. Because even if it's disallowed under 502(e), it's secured, and therefore it will -- our security interest will remain.

But I didn't know if you also --

MR. BAAY: That's exactly right.

THE COURT: -- wanted to argue that under 502(e) that you still have a claim, or if you basically are saying we agree we don't have a claim under 502(e), but it's secured, so it doesn't matter. I think you're saying the latter, but I'm not sure --

MR. BAAY: I think we're saying the latter, Your Honor. But again, that's not what I understood the point of today's hearing was.

THE COURT: Fair enough. Thank you.

Ms. Choi, Mr. Carlson.

MS. CHOI: Yes, Your Honor. Erin Choi on behalf of

the debtors. Your Honor, could you please make Ron Miller the presenter.

(Pause)

THE COURT: All right. He's the presenter.

MS. CHOI: Thank you, Your Honor. We have a presentation, and I'm going to be handling the first half of the presentation speaking to a general overview of the timeline, and the fact that LLOG has not demonstrated a valid lien in the ORRI, and that the terms of the ORRI bar relief to LLOG. And then Mr. Carlson will handle the issue regarding the fact that there's no pledge or assignment of the ORRI rents, and that LLOG's security interests do not extend to future contingent obligations.

So, turning to the next slide, so here is the transaction timeline, which we've covered extensively, so I won't belabor the point here. But just to note, you know, the December 2002 is when there was the operating agreement between LLOG and Davis, when LLOG granted the security interest in the contract area, which was at the time the 157 lease.

October 2008 is when the farmout agreement was entered into between Shell and Marathon, and LLOG and Davis, with respect to the 201 lease. And at that time is when Shell and Marathon reserved the cost-free ORRI in the 201 lease.

Fast forward to 2014 is when Fieldwood acquired Davis, and at that time is when Fieldwood and LLOG amended the

operating agreement. And it wasn't until 2015 when Shell assigned its interest in the ORRI to Fieldwood in connection with the APA.

So turning to the next slide -- Mr. Miller, if you could turn to the next slide, please.

Okay. So -- and we've gone through this, but in 2002, Davis and LLOG entered into the operating agreement. And pursuant to that agreement, this is the language of the security interest in the contract area, which was the 157. Notably, this language does not include a grant of an interest in rent.

Going to the next slide, Section 19.1 of OOA has -- relates to the overriding royalties and burdens on production. And our position -- at the last hearing, Your Honor had asked about the meaning of "subsequently created interest" under this provision. And our position, Your Honor, is that you don't need to look outside the language here to see that an overriding royalty is a subsequently created interest as described herein.

And this provision also makes clear that -- by way of example, the Davis overriding royalty interest was not a subsequently created interest. But the point being that subsequently created interest is essentially broader than overriding royalty, but overriding royalty is a subsequently created interest.

Next slide.

THE COURT: Where is the term "subsequently" -- can he go back a page? -- "subsequently created interest" utilized in the document so that it matters whether it is a subsequently created interest or not?

MS. CHOI: Your Honor, the only place this term appears is in Section 19.1 with the capital SCI. And we can see here, it describes, you know, overriding royalty is defined in the beginning. And then it says, "and such overriding royalty shall be considered a subsequently created interest."

So my understanding in reading this is that the party, you know, creating an overriding royalty shall assume and bear all obligations of the overriding royalty, regardless of the parties participation status. And there's some indemnification language, as well.

This provision goes on to then say, again, (audio interference) overriding royalties shall not be considered a subsequently created interest. This is where -- the only place where that specific term is used.

However, if you turn to the next slide, which shows 19.1.1 -- Mr. Miller, if you could please turn to the next slide. Thank you.

Here, the term "overriding royalty" is used. And as we talked about on the prior slide, override royalty is a subsequently created interest. And this is talking about a

subsequently created overriding royalty being made specifically subject to all the terms and provisions of this agreement. However, this specifically excludes the Davis overriding royalty interest, which, as we mentioned on the prior slide, was not a subsequently created interest.

THE COURT: Sorry. Which agreement is -- what are we looking at here?

MS. CHOI: This is the OOA from 2002, the original OOA.

THE COURT: Okay.

MS. CHOI: This just covers 157.

Okay. So turning to the next slide now. So in 2008, as we discussed, there's a farmout agreement that required LLOG and Davis to sign an ORRI (audio interference) Marathon farmout agreement with LLOG and Davis getting the 201. And this language here, you can see the creation and reservation of the ORRI in this section.

Turning to the next slide, Shell and Marathon's assignment of the operating rights to LLOG and Davis in the 201 lease also made clear that the assignment was subject to the ORRI. But the assignment of operating rights was not made subject to the OOA. So in looking -- the ORRI was recited with each assignment of operating rights, that was not subject to the OOA.

And going to the next slide -- and I think even

Mr. Baay conceded as much, but the 2008 documents reflect and made very clear that the ORRI was granted free and clear, and so this free and clear language is used throughout the farmout -- it's used in the farmout agreement. It's also used in the assignment and conveyance of the ORRI. You can see this language on the screen.

THE COURT: Look. On this one, he's agreeing that the internal calculation of how much is due on the ORRI isn't charged by anything. You don't have a dispute about that.

His argument is that the ORRI, once you receive a payment on it, can be subject to an after-acquired property mortgage. And according to Mr. Baay, you are not a subsequent party, an assignee, of Davis for the purpose of the language that we were looking at before that says that it supersedes and replaces.

And so only if you can assert Davis's supersede and replacement rights would you be free from your after-acquired problem as to the ORRI itself, as opposed to the calculation of how much is due under the ORRI. I think he -- in fairness, Mr. Baay, even disputes that. But that is -- I think he disputes that the other agreement exclusionary language, right there, would exclude subsequent acquired property generally. But he certainly says you're not a successor to Davis's rights here.

MS. CHOI: Yes, Your Honor. And with respect to

that, the agreement -- if you turn to the farmout agreement Exhibit C1 at -- I'm not sure exactly the page.

But, Mr. Miller, I believe you have the language available.

But there's a provision here that says that the "assignment and the rights (audio interference) interests and obligations assigned, reserved, accepted, or retained in this assignment shall enure to the benefit of and shall be binding upon the successors and assigns of the assignor and the assignee."

THE COURT: Is your client a successor or assign of an assignor or an assignee?

MS. CHOI: Your Honor, the assignor here (audio interference) assignee was LLOG and Davis, and so would acquired Davis, making us the assignee.

MR. CARLSON: Your Honor, Mr. Carlson here. Do you mind -- may I be heard on this for just a moment?

THE COURT: Yes, sir. Go ahead.

MR. CARLSON: So, Your Honor, Fieldwood was an assignee of the ORRI in the ORRI assignment here. So we -- Fieldwood was assigned the ORRI by Shell in the 2015 transaction, and stepped into the shoes of Shell as the holder of the ORRI. And that's in LLOG Exhibit -- I think it's 1603-21. This is the assignment of the ORRI from Shell to Fieldwood.

THE COURT: Yeah. But as to Davis that had the after-acquired property provision that you're trying to get rid of, were you their assignee, as well?

MR. CARLSON: We were their assignee in connection with the Davis equity purchase transaction. We acquired their working interests in 157 -- Green Canyon 157.

THE COURT: You acquired their working interest or you acquired the equity interest in Davis? Those are different things.

MR. CARLSON: We acquired the equity interest in Davis. If you'll just give me one second, I think we can find the proper exhibit here.

THE COURT: So you became the owner of Davis in its totality?

MR. CARLSON: That's my understanding, yes.

MS. CHOI: Yes. Your Honor, we acquired all issued and outstanding equity in Davis Offshore Partners and Davis Offshore, pursuant to that EPA -- or equity purchase agreement which was dated August 5, 2014.

THE COURT: Okay. All right.

MS. CHOI: So if we turn back to the presentation, Mr. Miller.

So the documents are consistent that the parties wanted to exclude the ORRI from the terms of the OOA. And this provision we've looked at already, of course, but there being

"no further understandings, representations, warranties, or obligations pertaining to the ORRIs, and this conveyance supersedes and replaces any and all prior agreements, whether written or oral, between the parties."

Ratifying, of course -- when the ratification happened, they were ratifying a 2002 agreement, so it was still a preexisting agreement. When Fieldwood ratified the MOA, the effective date of the ratification was backdated to 2002, so as to step into the shoes of Davis. And so, either way, the 2008 language that you see on the screen here still applies to the ratification under the express terms of the document.

So turning now, if you will, Mr. Miller, to the next slide.

So here is where we have the 2014 amendment to the operating agreement, which excludes the ORRI from being subject to the OOA. The language that was used here specifically states that the parties -- the desire of LLOG, LLOG Energy and Fieldwood, to amend the OA to, among other things, "provide that the former's ORRI is not to be considered a subsequently created interest under the OA."

And Your Honor, it's clear just from this and consistent with the documents that we've seen before, parties did not intend to have this be included within and being subject to the OOA.

And at this time, Fieldwood did not own the ORRI. It

wasn't until 2015 when Fieldwood acquired Shell's interest in the ORRI.

But, Mr. Miller, if you want to turn to the next slide.

Just in looking at all of these documents, together, and the time line of how these things played out, as well as the effective dates of these various agreements and the ratification that we just discussed, it's clear that the parties agree that the ORRI is not subject to the OOA's grant of security interest.

And indeed, from a practical standpoint, doesn't make sense that the subsequently -- that the -- excuse me -- that we would pay for something that -- that Fieldwood would pay for something separate like an ORRI, and then allow them to have a mortgage on it, when that wasn't the parties' intent. And all the documents speak to the contrary.

The documents consistently say "free and clear," and the OOA states in Article 19 that the subsequently created ORRI shall be subject to the terms of the OOA and rights granted the parties therein, but when Fieldwood ratified the OOA, the parties agreed that the ORRI would not be treated as a subsequently created ORRI. So the --

THE COURT: But subsequent creation --

MS. CHOI: -- (audio interference) would not be --

THE COURT: But as I understand it, the OOA doesn't

refer to subsequently created events, right? This is language that -- we've got to figure out what it means, but it's not like it has some meaning within the OOA, right?

MS. CHOI: Your Honor, it appears as though the parties intended to treat this ORRI similar to how it was carved out the day that the ORRI was carved out, and not subject to the other provisions of the OOA, and that being the parties' intent with respect to calling it --

THE COURT: I do understand your argument about --

MS. CHOI: -- subsequently created --

THE COURT: I do understand your argument about it then. I'm trying to figure out, though, the documents themselves don't say it. You're saying because of the ambiguity, I should infer the intent. Is that fair?

MS. CHOI: Your Honor, that is fair. The words are less than perfect. But it's -- that is fair, and I think -- when you look at all the agreements as a whole, and the parties', you know, purpose of doing this, that's the correct interpretation.

THE COURT: Can I do that at a hearing like this, without more?

MS. CHOI: Well, Your Honor, based on the evidence that's in the record, I think it is reasonable to have that interpretation. And if you find it's ambiguous, we are happy to put on evidence, if that would be helpful -- you know, to

explain that. But just based on what reasonably makes sense and the evidence within the record, we think that that's the proper interpretation.

THE COURT: Okay.

MS. CHOI: And Your Honor, in addition, just the terms of the ORRI themselves bar the relief that LLOG seeks because the terms make clear that this is free and clear -- these are free and clear, and that was always the intent, and the documents are consistent that the parties wanted to exclude the ORRI from the terms. So --

THE COURT: Yeah, look, it's --

MS. CHOI: -- with that, I will (audio interference) over --

THE COURT: No, it's clear and they acknowledge that Shell got the ORRI free and clear of whatever liens there might have been. The question is when Fieldwood subsequently acquires it, does it get captured by the after-acquired property clause. And as to whether after-acquired property and subsequently created property have the same meaning, they don't. But maybe that's the best meaning to give it.

I understand your argument. But you need to deal with his argument that says, yes, it went to Shell free and clear. But that doesn't mean if Shell transferred it to somebody else --

Can I tell you what's confusing about this for me is

I've got four parties to it. I've got their successors and assigns. But let's call them just four parties. If this had gone to a fifth party, and they had had a subsequent assignment or a subsequent acquisition provision in their mortgage, no question that the ORRI gets captured.

The issue is whether within this small box of four, adding to it their successors and assigns, did we eliminate the "subsequently acquired property" clause. Maybe we did and maybe we didn't. But I have a very narrow question about that, I think.

Do you think I'm wrong on that question, or about what my question is, I should say?

MS. CHOI: No, Your Honor --

THE COURT: Don't you agree that if this -- let's assume that Shell had transferred it to Exxon, and that Exxon had given LLOG an "after-acquired property" provision for anything acquired within this block. You agree it would be subject to an Exxon "after-acquired" provision, right?

MS. CHOI: Right, Your Honor. I think, you know, here -- the fact that we have the ratification that was backdated to 2002 is important, and I think that under the express terms of the document, that the language still applies to this, because of that language.

And in any event, we don't think there is a valid mortgage because these are -- there's no pledge of rent.

Mr. Carlson will discuss this further, but -- happy to answer any further questions on this.

THE COURT: No. Let's move ahead. Thank you.

Mr. Carlson.

MR. CARLSON: Thanks, Your Honor. Before we move ahead with the pledge argument, one thing I wanted to point out is just even if the subsequently created interest argument, if we're wrong on that, you know, the assignment of the ORRI itself from Shell to Fieldwood provides -- and we can pull it up -- 1603-21.

So here, assignor is Shell and assignee is Fieldwood. Wait. I'm sorry. I believe it's the next one. I'm sorry. It's -- yeah, this is it.

So here's where Shell assigns its interest in the ORRI to Fieldwood, assigns all of its rights, title, and interest in the ORRI. And then if you scroll -- in this "whereas" clause. And then if you scroll down to Paragraph 3, at the very end of this -- the last sentence in Paragraph 3 makes clear that Fieldwood assignee has the right of "full substitution and subrogation in and to any and all rights and actions of warranty which assignor, assignees, affiliates, or subsidiaries may have in the ORRI" -- "may have against any and all preceding owners or vendors of the ORRI."

And so what I would argue here, even if we're wrong about the other arguments, that we're taking this interest from

Shell with all of the same rights and interests and subrogations (audio interference) Shell's interest, which was clearly, you know, free and clear, as we pointed out.

THE COURT: All right.

MR. CARLSON: So turning back to the presentation. So, Your Honor, there's a few deficiencies in our mind, even if we -- that (audio interference) LLOG does not have a valid and perfect lien, in our opinion.

Number one is if a valid -- LLOG did not file a valid mortgage. The filing that Mr. Baay walked you through -- the UCC financing statements that were filed --

THE COURT: It was filed in the --

MR. CARLSON: -- that's number one, and I'll --

THE COURT: It was filed in the right place, right? If all they filed was the mortgage, you don't have a dispute about it.

MR. CARLSON: That's fair. If it was just -- if it was filing the mortgage, the mortgage itself. But here, it filed -- LLOG filed a UCC 1 financing statement and it -- you know, from the purposes of describing the collateral, it attaches the memorandum, the memorandum of operating agreement, and then even in Section 5A of the financing statement provides that it's covering fixtures and as-extracted collateral.

So the UCC financing statement that describes -- that checks the boxes for fixtures and as-extracted collateral, and

then describes -- you know, for purposes of describing the collateral, attaches the MOA. We just don't think under Louisiana law that that is -- that creates a valid mortgage.

THE COURT: Is there a case that holds that? I mean, Mr. Baay points out that you didn't give me any case that said that filing a mortgage with an attached UCC isn't as good as filing a mortgage without an attached UCC.

MR. CARLSON: There's no case that directly says that. But it's not that -- it's not that a mortgage was filed with UCC attached. The whole point of -- the whole point of noticing is that it's got to put the world on notice. It's got to be a reasonable for a third party to look at the filing and come to the conclusion that there's a preexisting security interest.

Here, if you look at what's filed, it's a UCC Financing 1 statement that was filed. It describes -- it checks the fixtures and as-extracted collateral boxes in the UCC 1 financing agreement, and then says oh, for -- you know, for a description of the collateral, see -- you know, see the attached MOA.

And so, you know, the --

THE COURT: I'm missing some -- I'm just missing some words you're saying. I heard you say it checks the fixture box. What other box does it check? Or let me see it, if I could.

MR. CARLSON: Sure. This is LLOG Exhibit 7.

THE COURT: So do you want me to pull it up, or is Mr. Miller going to pull it up?

MR. CARLSON: If Mr. Miller has it handy.

THE COURT: It's --

MR. CARLSON: 1603-7 is the --

THE COURT: Yeah, I've got it up. No, that's a declaration of --

MR. CARLSON: It's attached to the declaration. It's attached --

THE COURT: Got it. I'm looking at it.

MR. CARLSON: So then if you look at the -- starting with the parish recording page, it certifies that the attached document was filed for registry and recorded (audio interference) office for Terrebonne Parish, Louisiana. And then it attached the UCC 1 financing statement.

THE COURT: Right. And it checks fixture filing and as-extracted collateral.

MR. CARLSON: Right. And then it just has a reference, "Attached is the memorandum of operating agreement and financing statement." And so it's really -- it's a purported -- the way I read it, it's a purported UCC filing. And these terms, fixture and as-extracted collateral, that was filed in the wrong -- in the wrong spot.

THE COURT: But what does -- Louisiana law may be

different about this. And I haven't done any research on it. I don't think either of your briefs addressed this. But in Texas, you could be put on notice pleading, even if the -- inquiry notice, even if you had an imperfect pleading.

I'm not sure what "as-extracted collateral" means under Louisiana law. And I don't know what it means when the box that says the debtors do not have an interest of record in the real property is not checked. One would presume that means they do have an interest of record in the real property. And as-extracted collateral, presumably, is going to be the minerals. But maybe I'm reading that wrong.

So does that tell people, from looking at the UCC, we're asserting an interest in as-extracted minerals? And so you say, well, what does that mean from an inquiry notice? And I don't know if you do inquiry notice under Louisiana law. But if you do, you would then say, well, what does it say? And you would then read the mortgage.

MR. CARLSON: So the as-extracted collateral is a term of art that's defined under the Louisiana UCC.

THE COURT: Okay. And what does it mean?

MR. CARLSON: And it means -- let me just pull up their definition here.

(Pause)

THE COURT: Let me back up for a minute. Paragraph 4 -- you had me focused on 5. 4 says, in terms of what's the

collateral, "See the attached." So see what we have in the attached memorandum of operating agreement to identify the collateral.

MR. CARLSON: Right. So I guess the point is that it's not -- it's not that it's filing the MOA and attaching the UCC. It's the opposite. It's the UCC financing statement that's attaching the MOA here.

And you know, we weren't able to find a case exactly on point. But we did -- you know, we did find in a -- we did find in a secondary source, the Louisiana Practice Secured Transactions, that the filing of a UCC 1 financing statement in the real property record, even in a case the fixtures (audio interference) as-extracted collateral and other property-related collateral is without effect and is necessary -- is neither necessary nor sufficient with respect to security interests.

THE COURT: Do we have inquiry notice in Louisiana?

MR. CARLSON: I don't know the answer to that off the top of my head, but let me --

THE COURT: All right. I'm going to give you and Mr. Baay both a chance to file something after this hearing, to clarify whatever you want. But that's going to be one thing we need to clarify, because it looks to me like -- first of all, I'm not sure that I accept that this isn't good enough just on its face. But even if I accept that it's not good enough on

its face, I think under Texas law this would certainly be enough to put you on inquiry notice. And if Louisiana has inquiry notice, I'm not sure where you would go from there. So I'm going to want to understand that better, for sure.

MR. CARLSON: Understood, Your Honor.

So, Your Honor, the second and more problematic part of this filing is that it doesn't -- the actual -- and this isn't just a perfection issue. This is a grant issue. The actual grant on a security interest does not have express language for the assignment or pledge of rents included in the operating agreement, which is required under Louisiana law.

Here, the 2008 transaction -- and we'll walk through this -- where Shell and Marathon assign its operating interests to LLOG and Davis, but retain an overriding royalty interest, it creates a sublease under Louisiana law. And Louisiana law, we think, is clear that there has to be actually be express language pledging or assigning rent to grant -- to grant, much less perfect, the security interest in rent.

And so when Fieldwood then acquired its interest from Shell, and essentially it got sub -- you know, its rights to receive sublessor's rent pursuant to this transaction -- and the sublease.

And so if we could move to the next slide, Mr. Miller. I think we can go to the next slide, as well, here.

Here's a Fifth Circuit case applying Louisiana law that held that the assignment of a lease with a retention of an overriding royalty creates a sublease, regardless of how the parties file it. There are several -- there are other Louisiana law cases that we cite, as well, for this concept.

And so turning to the next slide, which is the actual assignment language, where here, again, LLOG and Davis are assigning -- sorry, Shell and Marathon are granting their operating rights to LLOG and Davis and reserving overriding royalty interest in the same -- as part of the transaction here.

And so then moving to the next slide, we'll go through the Louisiana Civil Code provisions, but we think it's pretty clear under Louisiana Civil Code, Article 3172: "By express provision in a contract establishing a pledge, the owner of land or holder may pledge bonuses, delay rentals, royalties, and shut-in payments arising from mineral leases, as well as other payments that are classified as rent under the Mineral Code."

And then if you read Comment B to this provision, it says -- you know, it makes (audio interference) makes clear, however, that a contract or pledge that encumbers mineral payments, only if the contract includes an express statement to that effect.

And so if you review -- if you take a look at the

operating agreement and the memorandum of agreement, neither of them contain an express pledge or assignment of rent. There is a general pledge or mortgage of immovables, but there's no -- again, there's no express language pledging or assigning rent.

THE COURT: Can you go back up to 3172 comment again? Let me take another look at that. One page before.

MR. CARLSON: Sure.

THE COURT: And what does our pledge say?

MR. CARLSON: Our pledge says -- we can pull it up. It's going to be Exhibit 2 -- LLOG Exhibit 2. And so the only language that I think here, this first part, A1, each non-operating party grant a mortgage (audio interference) and pledge (audio interference) title and interest in the lease -- all -- and then C is the all other individual property susceptible to mortgage.

THE COURT: So whether it -- as I understand your argument, is whether it's rents or not, it's not adequately pledged. Is that your argument?

MR. CARLSON: Correct. Even if it is rent --

THE COURT: If it's not rent. Assume with me it's not rent.

MR. CARLSON: If it's not rent -- if it isn't rent, it's still not adequately perfected, because there's no valid mortgage.

THE COURT: Because why?

MR. CARLSON: For the reasons we discussed, that the -- the UCC Financing 1 statement filing in the record -- in the mortgage records did not create a valid mortgage.

THE COURT: No, but under 3172(b) -- I want to compare 3172(b) with what got pledged here. I'm not sure why it's mattering that it's rents. It encumbers mineral payments only if --

MR. CARLSON: (Audio interference) mineral payment.

THE COURT: Is this a mineral payment, the ORRI? Forget whether it's rent or not. Is it a mineral payment?

MR. CARLSON: Yeah. If it's not rent, then it would -- I think -- I think our position would be that it would constitute a mineral payment. That also falls under 3172.

THE COURT: Can you have something under Louisiana law that is both an immovable and a mineral payment? Or are they mutually exclusive?

MR. CARLSON: I don't know that we found case law that they have to be mutually exclusive, but here, there's a -- the way we read this is that there's got to be a very -- here, the type of ORRI that's been granted creates a rent or creates a mineral payment. And so it has to be -- it has to be -- have this -- these magic words. It has to have a pledge of rent or mineral payments, you know, so it's not an either/or.

THE COURT: Okay.

MR. CARLSON: And we'll show you -- under the UCC, on

the next slide -- I'm sorry. One more slide after that.

So pledges and assignments of rent are taken right out of (audio interference) -- sorry.

Here. The Louisiana UCC takes pledges and assignments of rent out of (audio interference) they have to be filed in the mortgage records. So this is intended to show that the filings in the UCC wouldn't -- wouldn't perfect a security interest in rent either.

So then moving on to the next slide.

THE COURT: I want to back up a minute, because -- under Louisiana law, is there a difference between someone taking an ORRI and whatever rights that ORRI might have, which would include a payment right, or taking the payments from the ORRI, so that somebody could have a lien interest in the immovable ORRI. And once they take it, they get whatever rights go with that. But they wouldn't have an interest in the rent or the mineral payments under that ORRI until they took the ORRI itself.

Is that what we have under Louisiana law?

MR. CARLSON: The way I read the case law together with this statute, the Louisiana statute that we just had up, is that it creates -- an ORRI can still be a real property right. But by how it was created in connection with the 2008 transaction, it created a sublease. And so what Fieldwood acquired was its right to receive rents under that sublease.

And so it needed to be perfected by an express pledge of right to the rent -- the rental payments.

THE COURT: Okay.

MR. CARLSON: So then moving on to the next slide. So here, this is in response to an argument that LLOG raised that -- essentially, that the way the interest was acquired, that it extinguished by confusion our argument that was raised here. We don't think extinguishment by confusion applies -- you know, if you just look at exactly how the Louisiana Civil Code says here, that it has to be a situation where the "dominant and subservient estates are acquired in their entirety" by the same person.

That's not what we have here. Fieldwood acquired a 50 percent interest in the ORRI from Shell. And so we don't think extinguishment by confusion applies here.

And then moving to the next slide. So, Your Honor, even if -- even if LLOG is able to overcome all of the barriers and arguments that we've already raised here, and they do have a valid and perfected lien, we don't think that that valid and perfected lien would extend to future P&A obligations, for a couple different reasons.

The first is the disallowance argument under 502(e)(1)(B) that we've (audio interference) and then second is just by the express terms of the memorandum of operating agreement that was filed.

THE COURT: Yeah, I want to start with the (e)(1)(B) argument. The express terms may matter. But if we disallow a claim under 502(e)(1)(B), and then we look at 502 -- let me find it. The provision that deals with the effect on liens.

MR. CARLSON: (Audio interference)

THE COURT: No. On liens.

MR. CARLSON: 506(d)?

THE COURT: 506(d) excludes 502(e) from the provision that says the lien goes away. So the lien remains, if all you have is a 502(e) disallowance. That's what we didn't try -- I don't understand why 502(d)(1) would not govern and say even if the claim is disallowed that the lien would remain.

That's different than if the lien is disallowed because it doesn't exist, like you're saying. There is no lien on a future obligation, under the terms of the lien. But I think that the idea that the lien would go away because of the 502(e)(1)(B) disallowance is just wiped out by the 506(d)(1) provision.

MR. CARLSON: Sure. But I think what's different here, I think, is that -- well, I guess a couple of different things. Here, the contingency -- I think in Tri-Union, you know, the lien was preserved until -- unless and until the contingency occurred.

Here, the contingency really can't occur because, number one, the -- you know, the agreement -- the operating

agreement would be rejected. And then, number two is the Fieldwood's interest in the ORRI would be transferred on the effective date.

THE COURT: Different question. I'm trying to deal with if, under 502 -- the separate argument. If we disallowed the claim under 502(e)(1)(B), doing that in and by itself does not eliminate the lien that normally would be eliminated under 506, because of 506(d)(1).

That lien may go away for other reasons. But I don't think we need to deal it very long here, unless you can really persuade me that I'm misreading (d)(1) -- (d)(1) simply does not -- it's very explicit that the lien remains if a disallowance is solely because of 502(e).

Now, you have a separate argument that says there isn't a claim here. And I got that. And if there isn't a claim, then the lien does go away under 506. But I don't think it goes away because of 506 -- if the sole reason is 506(e)(1)(B). If that makes sense.

MR. CARLSON: No, it does. It makes sense, Your Honor. And I think -- I think we have to read it again together with the next argument that we'll walk you through, which is based on the MOA that was filed.

And so I think Mr. Baay had walked you through 5.2 of the MOA, which has the broader after-acquired security interest, whether acquired now -- I'm sorry, 5.3 -- "whether

acquired now or in the future" language. But then, if you read a few provisions down to this 5.5, it seems to be qualifying or limiting that broader grant to future acquired -- or future obligations to suggest -- "actual obligations and indebtedness that are outstanding and unpaid, and that are attributable to or charged pursuant to the interest of such non-operating party, pursuant to the operating agreement."

And here, of course, we're talking about -- what LLOG is saying, they view in the future will be future P&A expenses that have to incur, and then turn around and, you know, seek payment for. So that's not -- that obviously, that doesn't fall under 5.5 of the MOA.

So if we're in a world where they're correct that they do have a valid mortgage or valid security interest, our position is that they're relying on this MOA that limits their security interest to just what's outstanding and unpaid.

So (audio interference) --

THE COURT: But if they -- let's say that the P&A is done in five years. Would they then have the claim? Five years hence? That is secured?

MR. CARLSON: I don't think they would by virtue of what -- of what we have here, which is, you know, the agreement would be rejected and the ORRI would be transferred --

THE COURT: But if you reject --

MR. CARLSON: -- as part of the --

THE COURT: If you reject the agreement, then they're entitled to a damages hearing on what that is. And that would then bring into present those future obligations as a result of the rejection. What gets rid of their lien?

MR. CARLSON: Well, I'm not sure -- I'm not sure that the rejection damages claim would capture all future P&A in light of this provision.

THE COURT: Well, isn't that what we have to decide? Because if, in fact, it would capture it, I don't see this argument goes very far. If you're telling me at a damages hearing from rejection they wouldn't get damages arising out of a future payment obligation, why is that any different than any other future, you know, "take and pay" obligation where we bring everything back to the present? What does this do to get rid of that?

I understand it's nowhere near take and pay. But we bring things back to the present all the time, where the obligation hasn't yet arisen. We're trying to figure out what are the damages from rejection? In doing that, we always look at what are the future losses.

MR. CARLSON: Understood. I think it would come down to the question of whether or not -- whether or not, in light of this provision and the other provisions, it would really be -- it should be included as part of its expectation damages.

THE COURT: Okay. Got it.

MR. CARLSON: Yeah.

THE COURT: All right. Anything further, Mr. Carlson?

MR. CARLSON: That's the totality of our presentation.

THE COURT: Thank you.

Mr. Baay, anything further you want to add? I'm going to give each side really however much time you all want. I don't know if you want, you know, ten days, two weeks, three weeks, to file a follow-on brief so that you can cover anything that -- because I know I asked some questions today people didn't necessarily expect. So I want to get this right, and I'm going to give you some follow-on briefing opportunity. But if you want to make some additional oral arguments now, you can do so, as well, Mr. Baay.

MR. BAAY: Thank you, Your Honor. Can you please make Stephanie Franks the presenter again for me?

THE COURT: Of course.

(Pause)

THE COURT: She should be the presenter now.

MR. BAAY: Okay. Stephanie, if you could please pull up 1603-1, Page 132. Yeah, and highlight there.

And I'll be brief, Your Honor, and I appreciate the opportunity for further briefing, so I will make this brief. The way 19.1 reads, and the reason that it talks about

subsequently created interest is -- and where that term is -- you know, it's not defined as classically as we would normally see. But right in the middle of that paragraph where it says, "The party creating the override shall indemnify and hold other parties harmless from any and all claims, demands for payment, asserted by the owners of the override, and such overriding royalty shall be considered a subsequent created interest."

So I guess I started, you know, one paragraph up early. You know, at the very beginning of this, "if any party has previously created or hereafter creates an override," so that's what this is talking about. It's saying if one party to the agreement says, man, I'm broke. I need some money. I've got to go, I'm going to create an override and go mortgage it to the bank, then that's going to be considered a subsequent created interest, and that party is responsible for indemnifying the others if it has to be paid.

And what Shell was saying when it took the override as part of the transaction with LLOG and Davis, it says, I don't want my override treated like a subsequently created override. I want it to be above, and I want it to be -- have to be paid by everybody, not just -- you know, I don't want to hear later that this was created by one person or another. Or if somebody comes in later, that they didn't create it. This is -- this was to be treated like the Davis override. And the Davis override gets paid above, and is not subject to, you

know, one party or another having created it, and then owing it and having to indemnify the other party.

That's the whole point of the subsequently created interest. And Shell, you know, smartly said I don't want to treat this override like that. So when it got transferred to LLOG -- or I mean when it got transferred to Fieldwood or if they'd sold it to anybody else or if they'd mortgage it to the bank, it would have that additional value, because it's not a subsequently created interest.

And you know, as Your Honor pointed out, this is clearly a distinct concept in this document (audio interference) after-acquired property that is pledged and is clearly -- we think falls under any -- Fieldwood's grant when they acquired this. It's after-acquired property, and so it should fall under our agreement.

With respect to the MOA that's filed in the mortgage records, we cited, Your Honor to the Carr case. And in that case, the standard is cited as "sufficient notice to third parties." So clearly, you know, anybody looking at the mortgage record to find this would come across this mortgage agreement. Collateral is well defined. And we actually did both. We filed this along with the UCC statement, superfluously, in the mortgage records, and we filed the UCC in the -- with the Secretary of State, where the UCCs are to be filed.

So the mortgage covers the override and the UCC covers the as-extracted, as that -- as those -- as that oil and gas gets produced. They actually take it in (audio interference).

Thank you, Your Honor. That's all I would add, and we'll address the other questions that you had in our follow-up brief.

THE COURT: How long do you want to get that done? Two weeks, ten days, three weeks? I want to be flexible where people aren't killing themselves. I don't think there was that much we covered, but definitely some stuff I need to read about. What do you want? Couple weeks?

MR. BAAY: Yes. I think two weeks from today is fine.

THE COURT: Mr. Carlson, are you okay with that?

MR. CARLSON: Your Honor, the one -- the way we sort of tried to -- we tried to bifurcate the issues and have a set of issues heard today. We are -- this will essentially inform the decision of whether to assume the operating agreement, and we have a -- you know, we're aiming to close by the end of the month. And so what -- from the debtors' perspective, a little bit shorter time frame than two weeks would be preferred.

THE COURT: Yeah, I don't think you're going to get a decision from me by the end of the month.

MR. CARLSON: Okay.

THE COURT: But I would assume -- let me ask. I shouldn't make that assumption.

Mr. Baay and Mr. Carlson, does it make sense to agree on some order that would defer the assumption and rejection question until after we make a decision, so that y'all both have the benefits of that? So that, you know, notwithstanding any deadline in the plan or the confirmation order, that it will -- the actual deadline will be, whatever y'all want to say, 10 or 14 days after we issue an opinion? Or what do you all want to do for that deadline?

MR. BAAY: I think that makes sense. I'll have to check with my client, but I think that makes sense.

MR. CARLSON: I agree, Your Honor. I'll check with my clients, as well, but that does make sense, because my understanding is that the decision was going to depend on -- whether to assume an assignment was going to depend on the outcome of your ruling. So I'm -- that's fine.

THE COURT: Okay. Look, if your clients won't both agree to this within the next two or three days, then I'm just going to decide on the record that we have, because we're sort of forced to do that by the clients, and file something in the next two or three days to say y'all can't agree to some sort of an extension.

I don't think either of you want me deciding on the record we have. It's -- this is a very hard question. Y'all

may think it's simple from your own clients' point of view. I will tell you from mine, it's not. And I want to try and get it right. And I would rather take more time. But you know, I also understand people need to move ahead with business. And if y'all -- if either client wants to do it -- I don't want to know who agrees, who doesn't agree. If either side -- you know, no subsequent briefing, go ahead and make your decision, we'll get you something done, and we'll get it by the end of the month so that y'all can move ahead. It just -- it won't be as thorough. But I'll still, you know, work hard to get it done right. Okay.

So within the next --

COUNSEL: Thank you, Your Honor.

THE COURT: By Wednesday at 5, the parties will file any statement that says you need an immediate decision or a proposed order that will extend the deadline for assumption and rejection. I will give you the two weeks, until the 2nd, but I would ask whether y'all would prefer to have noon on the 30th, so that you don't have your associates working all weekend. But I'll leave that up to Mr. Carlson and Mr. Baay, what y'all want to do about that question.

MR. BAAY: Noon on the 30th is fine with us, Your Honor.

MR. CARLSON: And for the debtor --

THE COURT: Noon on the 30th, Mr. Carlson?

MR. CARLSON: That works for us, yes.

THE COURT: All right. Noon on the 30th will be the deadline for any subsequent briefing. We'll take it under advisement on the afternoon of the 30th. But I don't think I'm going to have a decision a week later. I think this is hard. And I want people to be aware of that. If I need to make a decision, I've got to start now to try and get you something out by the 30th.

Okay. Thank you all for --

COUNSEL: Thank you, Your Honor. Appreciate your time this afternoon.

THE COURT: No, I really appreciate your argument. I learned a lot, and it's going to be a hard question. I'll get it done, though. Thank you.

MR. CARLSON: Thank you.

MR. BAAY: Thank you.

(Proceedings concluded at 3:49 p.m.)

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C E R T I F I C A T I O N

I, Michelle Costantino, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Michelle Costantino

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MICHELLE COSTANTINO, AAERT NO. 589 DATE: July 21, 2021

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